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16 INTERNATIONAL

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AUG 26 1994

HUB LAW OFFICES

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF MARIN

19 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
20 INTERNATIONAL, a California not-)
21 for-profit religious corporation;) [PROPOSED] ORDER DENYING
22 Plaintiff,) GERALD ARMSTRONG'S MOTION
23 vs.) FOR SUMMARY JUDGMENT OR, IN
24) THE ALTERNATIVE, FOR
25) SUMMARY ADJUDICATION OF
26) ISSUES
27 GERALD ARMSTRONG; MICHAEL WALTON;)
28 THE GERALD ARMSTRONG CORPORATION,)
a California for-profit)
corporation; Does 1 through 100,) DATE: September 9, 1994
inclusive,) TIME: 9:00 a.m.
Defendants.) DEPT: 1
GERALD ARMSTRONG,) TRIAL DATE: September 29,
Cross-Complainant,) 1994
vs.)
CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
Corporation; DAVID MISCAVIGE;)
DOES 1 to 100;)
Cross-Defendant.)

1 This matter came before me on the motion by Defendant Gerald
2 Armstrong for summary judgment, or in the alternative, summary
3 adjudication brought pursuant to Code of Civil Procedure Section
4 437c(f). Having read the papers, both in support of and in
5 opposition to the Motion, and having heard argument of counsel,
6 and for good cause shown,

7 IT IS HEREBY ORDERED that:

8 1. The motion for summary judgment or in the alternative
9 summary adjudication is denied. Triable issues of material fact
10 exist as to each of plaintiff's claims.

11 2. The following material issues are disputed and require
12 trial:

13 a. Whether after Armstrong divested himself of his assets
14 he became insolvent. [Disputed Fact No. 7] Disputed evidence:
15 Defendant's Exhibit 1, Declaration of Gerald Armstrong, ¶7;
16 Plaintiff's Exhibit 1(B), Declaration of Gerald Armstrong dated
17 October 17, 1991, ¶7; Plaintiff's Request for Judicial Notice,
18 Exhibit B; Plaintiff's Exhibit 1, Declaration of Laurie J.
19 Bartilson, ¶3;

20 b. Whether Armstrong received valuable consideration for
21 the transfers of property which he made in August, 1991.
22 [Disputed Facts 24-3, 18, 19, 20.] Evidence: Defendant's Exhibit
23 1, ¶¶15, 25; Plaintiff's Exhibit 1(A), Deposition of Gerald
24 Armstrong, pp. 267:16 - 268:19, Plaintiff's Exhibit 1(L),
25 Deposition of Michael Walton, pp. 39:12-19.

26 c. Whether at the time of the transfers Armstrong intended
27 to incur debt that would be beyond his ability to repay by
28 breaching his agreement with the Church, or reasonably should

1 have believed that he would incur such debts. [Disputed Facts 1,
2 7, 7-4, 23, 24-5] Evidence: Defendant's Exhibit 1, Declaration
3 of Gerald Armstrong, ¶¶ 7, 9; Plaintiff's Exhibit 1(A),
4 Deposition of Gerald Armstrong pp. 107:3 - 109:6; 112:13-113:2;
5 123:1-124:11, 424:6 - 428:8 and Exhibit 6 thereto; Plaintiff's
6 Exhibit 1(B), Declaration of Gerald Armstrong dated October 17,
7 1991, ¶7; Plaintiff's Request for Judicial Notice, Exhibit B;
8 Plaintiff's Exhibit 1, Declaration of Laurie J. Bartilson, ¶3;
9 Plaintiff's Request for Judicial Notice, Exhibits E, F, G;

10 d. Whether Armstrong transferred his property to Walton
11 and others with the intent to hinder, delay or defraud the
12 Church. [Disputed Facts: 14, 15, 16, 17, 24-3, 24-4, 24-5, 24-6,
13 24-7] Evidence; Defendant's Exhibit 1(D), ¶¶ 15, 25, 30, 33;
14 Defendant's Exhibit 1(F), 266:2 - 269:11; Defendant's Exhibit
15 1(G), 34:9 - 41:12; Defendant's Exhibit 1(H), 75:17, 91:12;
16 Defendant's Exhibit 1(I), 19:5 - 19:17, 27:2 - 28:2, 30:11 -
17 32:1; Plaintiff's Exhibit 1(H); Plaintiff's Exhibit 1(A), pp.
18 82:23 - 84:9; 267:16 - 268:19; 182:13 - 183:6; 186:21 - 187:5;
19 194:16-22; 200:7 - 201:6; 218:7 - 219:23; 284:22 - 285:20, 311:3
20 - 314:13; 322:19 - 329:10; 329:15 - 331:10; 390:10-20; 420:18 -
21 422:25; Plaintiff's Exhibit I(L), pp. 39:12-19; Plaintiff's
22 Exhibit 2(E), p. 95:5-12; Plaintiff's Request for Judicial
23 Notice, Exhibits B, C, and D.

24 3. Further, Armstrong has failed to establish any of his
25 affirmative defenses as a matter of law. Armstrong's lack of
26 insolvency, even if deemed established, does not bar the claims
27 made in plaintiff's first, second and third causes of action,
28 because insolvency of the debtor is not an element of the type of

1 fraudulent conveyance alleged. Civil Code Section 3439.04(a) and
2 3439.04(b)(2); Reddy v. Gonzalez (1992) 8 Cal.App,4th 118, 10
3 Cal.Rptr.2d 55. Moreover, the neither the free exercise nor the
4 establishment clause of the First Amendment bar plaintiff's
5 claims. The Fraudulent Conveyance Act is a religiously neutral
6 statute. This Court may evaluate Armstrong's conduct in relation
7 to the admitted conveyances without evaluating his religious
8 beliefs. Armstrong's claim that the permitting the Church to sue
9 him would violate the Establishment Clause is frivolous.

10 4. This Court also finds that defendant Armstrong and his
11 attorney failed to comply with MCR Nos. 2.13(e), 2.13(h), 2.2(e),
12 and 2.13(i), creating substantial waste of the Court's resources.
13 Defendant and his counsel are accordingly ordered to pay
14 \$_____ to the Court clerk within ____ days of this Order.

15
16 Dated: September __, 1994.

17 _____
18 HONORABLE GARY W. THOMAS
19 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of _____, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is _____

On August 26, 1994, I served the foregoing document described as [PROPOSED] ORDER DENYING GERALD ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on August 26, 1994, at Los Angeles, California.

** (BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

** Such envelopes were hand delivered by Messenger Service

Executed on August 26, 1994, at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)